

Rev. 563

FIELD OPERATIONS HANDBOOK - 12/9/88

30d07 - 30d08

(b) For example, in the case of an employee paid the MW, if an employer took no tip credit during the first 40 hours in the w/w but took a full tip credit for the OT hours, the actual cash wage paid by the employer would be \$3.69 for the OT hours and would not constitute compliance. This is illustrated by the following example:

| <u>Non-OT Hours</u>    | <u>OT Hrs.</u>            | <u>Actual OT due</u>   |
|------------------------|---------------------------|------------------------|
| \$3.35 cash            | \$3.35 (MW)               | \$3.35                 |
| <u>0.00</u> tip credit | <u>-1.34</u> (tip credit) | <u>1.68</u> (1/2x3.35) |
| \$3.35                 | \$2.01 (cash wage)        | \$5.03                 |
|                        | <u>+1.68</u> (1/2 T)      |                        |
|                        | \$3.69                    |                        |

(c) Where an employer pays a cash wage to a tipped employee in excess of the amount required by Sec 3(m) and also wishes to claim the full tip credit amount, the employee's regular rate of pay for OT purposes is the sum of the cash wage paid and the tip credit amount claimed. For example, where an employer pays a cash wage of \$2.50 per hour and claims a tip credit of \$1.34 per hour (40 percent of \$3.35) the employee's regular rate of pay is \$3.84 per hour and the employee would be due \$5.76 per hour for each OT hour worked.

| <u>Non-OT Hours</u>            | <u>OT hours</u>                        |
|--------------------------------|--|
| \$2.50 cash wage paid          | \$2.50 cash wage paid                  |
| <u>1.34</u> tip credit claimed | <u>1.34</u> tip credit claimed         |
| \$3.84                         | 3.84 reg. rate                         |
|                                | <u>1.92</u> additional cash due for OT |
|                                | \$5.76 OT rate of                      |

pay

30d08 Tips in excess of statutory tip credit may not be credited against uniform purchase and maintenance costs.

(a) Where, for example, the employer pays \$2.01 per hour in cash wages and employees earn \$2.00 per hour in tips, then the maximum tip credit is \$1.34 per hour (see footnote in FOH 30d06(a)) and, therefore, the employees' R/R is \$3.35. Accordingly, the employer may not make any deductions for uniform purchases or maintenance, etc., since tips received by an employee in excess of \$1.34 per hour (40 percent of the MW) are not deemed wages for purposes of FLSA.

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30d08 - 30d09

(b) On the other hand, where the employer pays \$2.50 per hour in cash wages and claims a tip credit of \$1.34 per hour and the employees receive not less than \$1.34 per hour in tips, the employees' R/R is \$3.84 per hour. In such cases, deductions of up to 49 cents per hour (\$3.84 - \$3.35) may be made for such things as uniform purchases and maintenance without cutting into the required MW. (The employees would still be due \$5.76 per hour for each OT hour worked (\$3.84 x 1 1/2) (See 30d07(c).)

30d09 IRS tip allocation rules.

Where an employer withholds taxes from a tipped employee based upon a percentage of sales, rather than on reported tips, a reduction in an individual employee's net pay may result, but this is not an FLSA violation. Employees who contact WH alleging over-withholding should be referred to the nearest IRS office.